



**STATE OF MAINE  
SUPREME JUDICIAL COURT**

**NOTICE AND OPPORTUNITY FOR COMMENT  
ON  
Proposed Amendments to  
Maine Rules of Criminal Procedure 5(a) and 5C(a)**

**Comments Due On or Before October 6, 2009**

The Maine Supreme Judicial Court is considering a proposal to amend Rules 5(a) and 5C(a) of the Maine Rules of Criminal Procedure to add state shutdown days to the days exempted from counting toward the 48-hour requirements in the first appearance rules. The draft amendments also clarify the language regarding days that courts may be closed. The reasons for the amendments are stated in the Advisory Note to the amendment to Rule 5(a).

The Court invites comments on the proposed amendment. Any comments should be filed with the Clerk of the Supreme Judicial Court by October 6, 2009. Comments sent via e-mail may be in the text of an e-mail or in an attachment to an e-mail, addressed to [lawcourt.clerk@maine.gov](mailto:lawcourt.clerk@maine.gov). If the comments are in an attachment, the attachment must be a document in one of the following formats: plain text (.txt), Microsoft Word 1997-2004 (.doc), rich text format (.rtf), or portable document format (.pdf). The Clerk's Office will acknowledge receipt of the e-mail via a reply e-mail.

All comments must contain (1) the name, mailing address and telephone number of the individual submitting the comments; and (2) the name, mailing address and main telephone number of the organization (if any) on whose behalf

the comments are submitted. An individual need not be an attorney to submit comments on behalf of an organization.

Dated: September 22, 2009

Maine Supreme Judicial Court  
205 Newbury Street  
Post Office Box 386  
Portland, Maine 04112-0368  
(207) 822-4146

STATE OF MAINE  
SUPREME JUDICIAL COURT  
**[DRAFT PROPOSED RULES FOR COMMENT]**  
AMENDMENTS TO MAINE RULES OF CRIMINAL PROCEDURE

**2009 Me. Rules --**

Effective: October 8, 2009

All the Justices concurring therein, the following amendments to the Maine Rules of Criminal Procedure are hereby adopted to be effective on the date indicated above. The specific rules amendments are stated below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending each amendment, but it is not part of the amendment adopted by the Court.

1. Rule 5, subdivision (a) of the Maine Rules of Criminal Procedure is amended to read as follows:

**(a) Initial Appearance Before the District Court Judge.** A person arrested for a Class D or Class E crime, either under a warrant issued upon a complaint filed in the District Court or without a warrant, who is not sooner released, shall be brought before a District Court judge without unnecessary delay and in no event later than 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, ~~and court holidays~~ days when the courts are closed, and state government closure days. Such appearance may be by audiovisual device in the discretion of the court. If such appearance has not taken place within 36 hours after the arrest, the custodian shall notify the attorney for the state of the upcoming deadline. If such appearance has not taken place within 48 hours after the arrest, excluding ~~Saturdays, Sundays, legal holidays, and court holidays~~ those days indicated above, the custodian shall release the person from custody or bring the person forthwith before the District Court for such appearance.

### Advisory Note

The amendment to Rule 5 clarifies the first appearance rule in two ways. First, it includes state government closure days in the list of exemptions from the time requirements of the first appearance rule. These are days when state government, including District Attorney offices, are closed due to state budget restrictions as addressed in P.L. 2009, ch. 213. The phrase “state government closure days” is used because that is how those days are referred to in the enabling public law (P.L. 2009, ch. 213, Part SSS). Second, the amendment eliminates the archaic reference to “court holidays.” With the elimination more than a quarter century ago of days, such as election days, when courts were closed on days other than legal holidays, the separate reference to “court holidays” is no longer needed. The reference to “court holidays” is replaced by reference to “days when the courts are closed.” Such closures can occur because of weather conditions, health issues, or other public safety related reasons. While the provisions of Rule 5(a) govern extensions of the first appearance rule, the provisions of Rule 4A are not changed. Persons arrested without a warrant and not released from custody must be brought before some magistrate within 48 hours of arrest for a probable cause determination.

2. Rule 5C, subdivision (a) of the Maine Rules of Criminal Procedure is amended to read as follows:

**(a) Initial Appearance Before the Superior Court Justice.** A person arrested for at least one Class C or higher crime (accompanied or unaccompanied by related Class D or Class E crimes) under a warrant issued upon an indictment or upon an information or complaint filed in the Superior Court or without a warrant, who is not sooner released, shall be brought before a Superior Court justice without unnecessary delay and in no event later than 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, ~~and court holidays~~ days when the courts are closed, and state government closure days. Such appearance may be by audiovisual device in the discretion of the court. If such appearance has not taken place within 36 hours after the arrest, the custodian shall notify the attorney for the state of the upcoming deadline. If such appearance has not taken place within 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, ~~and court holidays~~ those days indicated above, the custodian

shall release the person from custody or bring the person forthwith before the Superior Court for such appearance.

### **Advisory Note**

The basis for this amendment to Rule 5C(a) is the same as stated in the Advisory Note to the amendment of Rule 5(a) that is adopted as part of this Order.

3. These amendments shall be effective October 8, 2009.

Dated: October --, 2009

FOR THE COURT<sup>1</sup>

/S/

---

LEIGH I. SAUFLEY  
Chief Justice

DONALD G. ALEXANDER  
JON D. LEVY  
WARREN M. SILVER  
ANDREW M. MEAD  
ELLEN A. GORMAN  
JOSEPH M. JABAR  
Associate Justices

---

<sup>1</sup> This Rules Amendment Order is approved after conference of the Court, all of the Justices concurring therein.